

November 20, 2017

The Honorable Ajit V. Pai  
Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street S.W.  
Washington, D.C. 20554

The Honorable Mignon Clyburn  
Commissioner  
Federal Communications Commission  
445 12<sup>th</sup> Street S.W.  
Washington, D.C. 20554

The Honorable Mike O’Rielly  
Commissioner  
Federal Communications Commission  
445 12<sup>th</sup> Street S.W.  
Washington, D.C. 20554

The Honorable Brendan Carr  
Commissioner  
Federal Communications Commission  
445 12<sup>th</sup> Street S.W.  
Washington, D.C. 20554

The Honorable Jessica Rosenworcel  
Commissioner  
Federal Communications Commission  
445 12<sup>th</sup> Street S.W.  
Washington, D.C. 20554

Dear Chairman Pai, Commissioner Clyburn, Commissioner O’Rielly, Commissioner Carr and Commissioner Rosenworcel:

We write to remind the Commission that it is prohibited from allowing any single company to own broadcast stations that break the national ownership cap. To comply with the law, the Commission is required to order divestitures in any transaction in which a company—including Sinclair Broadcast Group (Sinclair)—attempts to acquire stations that reach more than 39% of the national broadcast audience. If the Commission fails to comply with the law now, future Commissions will be forced to order such divestitures when the company requests to renew licenses that exceed the statutory cap.

Congress acted in 2004 to set the maximum national audience reach for entities owning TV stations at 39 percent.<sup>1</sup> Congress passed this law on a bipartisan basis to protect consumers, encourage independent voices in their media market, and prevent one station group from serving more than 39% of the population. By explicitly excluding review of the cap from the Congressionally-mandated quadrennial review of broadcast ownership rules, we made clear that the FCC is not permitted to change or evade that national cap.<sup>2</sup> Commissioner O’Rielly correctly

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<sup>1</sup> Consolidated Appropriations Act of 2004, Pub. L. No. 108-199, § 629, 118 Stat. 3, 99 (2004).

<sup>2</sup> CCA, *supra* n. 2, at 100.

testified at a recent FCC oversight hearing that only Congress can change the cap.<sup>3</sup> As Commissioner O’Rielly also rightly noted, Congress did not intend to allow a company to circumvent the cap using outdated rules such as the UHF discount. His reading of the law is consistent with the position of at least two other sitting Commissioners.<sup>4</sup>

We were therefore surprised when Commissioner O’Rielly refused to say whether he will allow a company to acquire licenses that would exceed the nationwide cap set by Congress. This is not a judgment call—no Commissioner has the authority to ignore the law.

The law requires that if the FCC approves any transaction that would exceed the statutory cap—including the applications by Sinclair to acquire licenses owned by Tribune Media—that it orders the company to divest any stations necessary within two years.<sup>5</sup> The Commission does not have the authority to waive this statutory requirement.

Ignoring the statutory cap now would force future Commission’s to act to enforce the law properly. Specifically, the final backstop to ensure compliance with the law comes when a company applies to renew its licenses. The Commission cannot renew licenses for group owners when those licenses exceed the 39 percent cap—the FCC must order divestitures at that time. While Commission practice is to grandfather licenses during renewals when those licenses violate Commission rules, the FCC cannot waive the law. Neither this Commission nor any future Commissions may grandfather a license renewal that violates the statutory cap.

When each of you was sworn in as Commissioners, you swore to faithfully discharge the duties of your office. These obligations include enforcing the laws of the United States as passed by Congress. The majority of the Commission correctly believes that Congress imposed a 39% national cap for broadcasters and that we did not create any loopholes around this cap. To comply with your oath, you are required to order divestitures when necessary to stay within the restraints of the law.

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<sup>3</sup> See Transcript, Hearing on Oversight of the Federal Communications Commission, Subcommittee on Communications and Technology, Committee on Energy and Commerce (Oct. 25, 2017) at 47.

<sup>4</sup> See *id.* at 50. In response to a question from Ranking Member Doyle, Commissioner Rosenworcel stated, “I believe that 39 percent is the figure that Congress chose to put in the law and that this Commission needs to abide by it.” See also, Dissenting Statement of Commissioner Mignon L. Clyburn, *Re: Amendment of Section 73.3555(e) of the Commission’s Rules, National Television Multiple Ownership Rule*, MB Docket No. 13-236 (Apr. 20, 2017) at 2.


<sup>5</sup> CCA, *supra* n. 2, at 99.

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Commissioner Rosenworcel  
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We will be closely monitoring the Commission's action in this area. We encourage you to spend the Commission's time exploring ways to promote both minority media ownership and a diversity of programming on our airwaves instead of treading down this path that is contrary to the will of Congress.

Thank you for your consideration of these concerns, which are shared by many of our colleagues in the Congress.

Sincerely,



Nancy Pelosi  
Democratic Leader



Frank Pallone, Jr.  
Ranking Member  
Committee on Energy  
and Commerce



Mike Doyle  
Ranking Member  
Subcommittee on Communications  
and Technology





OFFICE OF  
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

February 8, 2018

The Honorable Mike Doyle  
U.S. House of Representatives  
239 Cannon House Office Building  
Washington, D.C. 20515

Dear Congressman Doyle:

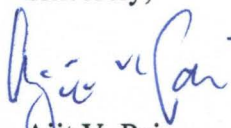
Thank you for your letter regarding the national television ownership cap. As you know, the FCC during the prior Administration repeatedly held that the Commission has the authority to modify the national ownership cap. In 2013, the FCC adopted the UHF Discount Notice of Proposed Rulemaking, which stated, "we believe the Commission retains the authority to modify both the national audience reach restriction and the UHF discount, provided such action is undertaken in a rulemaking proceeding separate from the Commission's quadrennial review of the broadcast ownership rules pursuant to Section 202(h)." And in 2016, the prior FCC converted that belief into bedrock. It definitively "conclude[d] that [it] has the authority to modify the national audience reach cap, including the authority to revise or eliminate the UHF discount." And it went even further, stating that the Communications Act does "not impose a statutory national audience reach cap or prohibit the Commission from evaluating the elements of this rule." I would note that the two current Democratic Commissioners voted in favor of both the 2013 NPRM and the 2016 Order.

Nonetheless, the Commission voted last month to start a proceeding to examine the national cap in conjunction with the UHF discount and teed up yet again the precise question of whether the Commission has the authority to modify or eliminate the national cap, including the UHF discount. I appreciate hearing your views on the subject and a copy of your letter will be entered into the record of the proceeding.

Your letter also encourages the Commission to explore ways to promote minority ownership and a diversity of programming. I wholeheartedly agree. That's why the Commission took concrete steps to address the lack of diversity of ownership in the broadcast industry with the establishment of a new incubator program this past November. We are seeking public input on its design, and I have also tasked the new Advisory Committee on Diversity and Digital Empowerment to provide additional recommendations to the Commission on the new incubator program. I remain confident that we can help bring new voices into the broadcast industry.

Please let me know if I can be of any further assistance.

Sincerely,



Ajit V. Pai





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February 8, 2018

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U.S. House of Representatives  
237 Cannon House Office Building  
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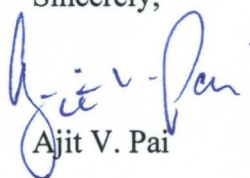
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233 Cannon House Office Building  
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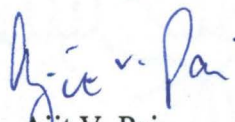
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